

Secretary's Order No.: 2013-A-0029

**RE: Approving Final Amendments to 7 DE Admin. Code 1138,
Emission Standards for Hazardous Air Pollutants for Source Categories,
Section 10: "Area Source Plating and Polishing Operations".**

Date of Issuance: August 13, 2013

Effective Date of the Amendment: September 11, 2013

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") the following findings, reasons and conclusions are entered as an Order of the Secretary in the above-referenced rulemaking proceeding.

Background and Procedural History

This Order considers the proposed regulatory amendments to 7 DE Admin. Code 1138, Emission Standards for Hazardous Air Pollutants for Source Categories, Section 10, "Area Source Plating and Polishing Operations". The Department's proposed amendments to Section 10 of 7 DE Admin. Code 1138 are based on changes that the EPA promulgated in September 2011 under 40 CFR Part 63, Subpart WWWW (Subpart 6Ws). Delaware's Section 10 requirements, like those of Subpart 6Ws, are applicable to area source plating and polishing operations.

Congress sought to reduce cancer and non-cancer health risks due to the exposure to hazardous air pollutants (“HAPs”) in the 1990 Amendments to the Clean Air Act. Under Section 112(k) – *Area Source Program* – Congress mandated that the EPA identify at least 30 HAPs that posed the greatest threat to public health in urban areas, to identify the area source categories that emit any of those 30 HAPs, and to adopt regulations to address the emissions of those 30 HAPs from those area source categories. On July 1, 2008, the EPA promulgated an area source plating and polishing standard applicable to facilities in Delaware. This standard, found at 40 CFR, Part 63, Subpart WWWW, is applicable to a variety of electroplating and electroless plating operations, as well as the dry mechanical polishing of previously plated products, including products previously plated with chromium. The HAPs of concern in Subpart 6Ws are the compounds of cadmium, chromium, lead, manganese and nickel. Compounds of each of these metals, except manganese, have been classified as known or probable carcinogens. The systematic impacts of the various metal compounds differ; however, compounds of all of these metals can pose non-cancerous risks to the exposed public. On November 1, 2009, the Department adopted the requirements in Subpart 6Ws as Section 10 of 7 DE Admin. Code 1138.

Following the EPA’s July 2008 promulgation, the plating and polish industry engaged the EPA in discussions of its ongoing concerns regarding Subpart 6Ws. The EPA agreed that certain aspects of Subpart 6Ws, “...as promulgated have led to misinterpretations, inconsistencies, and confusion regarding the applicability of the rule” (76 FR 35746, June 20, 2011). Thus, on September 19, 2011, the EPA amended Subpart

6Ws to make several technical corrections and clarifications to the rule's existing language to provide clarity (*see* 76 FR 57915, Sept. 19, 2011). The primary change effected in this amendment was to clarify that Subpart 6Ws did not apply to any bench scale activities. At the same time, the EPA also made changes (1) to clarify industries' confusion on applicability of Subpart 6Ws to various types of plating operations; (2) to correct portions of the original text that was being misinterpreted; and (3) to correct several technical errors.

Under the current proposed regulatory action, the Department would review and incorporate the federal changes promulgated by the EPA in September 2011, where appropriate, in Section 10 of 7 DE Admin. Code 1138. There are four known plating and polishing operations in Delaware. Of these, only Industraplate (located in south Wilmington) and Standard Engineering (located in Stanton) were found to be subject to Section 10 when it was originally adopted by the Department in November of 2009. Because both affected sources are small business entities, the Department plans to work closely with the sources to ensure they understand the changes being made, as was done during the original 2009 adoption of Section 10.

The Department's Division of Air Quality commenced the regulatory development process with Start Action Notice 2012-17. The Department published the initial proposed regulatory amendments in the June 1, 2013 *Delaware Register of Regulations* and held a public hearing on June 27, 2013. The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated August 5, 2013 (Report). The Report recommends certain findings and the adoption of the proposed Amendment as attached to the Report as Appendix A.

Findings and Discussion

I find that the proposed *revised* Amendments are well-supported by the record developed by the Department, and adopt the Report to the extent it is consistent with this Order. The Department's experts developed the record and drafted the proposed *revised* Amendments. While the Department received public comment from the regulated community at its workshops held in both New Castle and Sussex counties earlier this year (which was then incorporated into the proposed regulation), as noted in the Report, no members of the public attended the aforementioned hearing on June 27, 2013, nor were any comments received from the public by the Department, either at the time of the hearing or prior to the record formally closing in this matter on July 12, 2013.

I find that the Department's experts in the Division of Air Quality fully developed the record to support adoption of these *revised* Amendments. With the adoption of the *revised* regulatory amendments to 7 DE Admin. Code 1138, Emission Standards for Hazardous Air Pollutants for Source Categories, Section 10, "Area Source Plating and Polishing Operations", Delaware will be enabled to incorporate the federal changes promulgated by EPA in September 2011, where appropriate, in Section 10. These changes include (1) clarification that Subpart 6Ws did not apply to any bench scale activities; (2) clarification on the applicability of Subpart 6Ws to various types of plating operations; (3) correction of portions of the original regulation language that was being widely misinterpreted; and (4) correction of several technical errors.

In conclusion, the following findings and conclusions are entered:

- 1.) The Department has jurisdiction under its statutory authority to issue an Order adopting these proposed *revised* Amendments as final;
- 2.) The Department provided adequate public notice of the proposed *revised* Amendments, and provided the public with an adequate opportunity to comment on the proposed *revised* Amendments, including at a public hearing;
- 3.) The Department held a public hearing on the proposed *revised* Amendments on June 27, 2013;
- 4.) The Department's Hearing Officer's Report, including its recommended record and the recommended *revised* Amendments as set forth in Appendix A, are adopted to provide additional reasons and findings for this Order;
- 5.) The recommended *revised* Amendments do not reflect any substantive change from the initial proposed regulation Amendments as published in the June 1, 2013, *Delaware Register of Regulations*;
- 6.) The recommended *revised* Amendments should be adopted as final regulation Amendments because Delaware will then be enabled to incorporate the federal changes promulgated by EPA in September 2011, where appropriate, in Section 10. These changes include (1) clarification that Subpart 6Ws did not apply to any bench scale activities; (2) clarification on the applicability of Subpart 6Ws to various types of plating operations; (3) correction of portions of the original regulation language that was being widely misinterpreted; and (4) correction of several technical errors. Moreover, the *revised* Amendments are well supported by documents in the record; and

7.) The Department shall submit this Order approving the final regulation Amendments to the *Delaware Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

/s/ Collin P. O'Mara

Collin P. O'Mara
Secretary